

**RE: [EXTERNAL]RE: Extension and Rule 26F**

---

**From:** Skinner, Reginald M. (CIV) Reginald.M.Skinner@usdoj.gov

**To:** Jason R. Wareham jrwareham@thelawcenterpc.com

**Cc:** John Hodges john@hhtx.law, Green, Robert (USATXW) Robert.Green3@usdoj.gov, Natalie Lamy nlamy@thelawcenterpc.com

**Date:** Tue, Apr 4, 2023, 11:24 AM

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Jason,

My co-counsel and I have been authorized to notify plaintiff of the agencies' decision, as counsel of record for the United States in this suit.

Thanks,  
Reggie

---

Reginald M. Skinner

Senior Trial Attorney

U.S. Department of Justice, Civil Division, Torts Branch

Constitutional & Specialized Tort Litigation

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E-mail: [reginald.m.skinner@usdoj.gov](mailto:reginald.m.skinner@usdoj.gov)

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---

**From:** Jason R. Wareham <jrwareham@thelawcenterpc.com>

**Sent:** Tuesday, April 04, 2023 12:54 PM

**To:** Skinner, Reginald M. (CIV) <Reginald.M.Skinner@usdoj.gov>

**Cc:** John Hodges <john@hhtx.law>; Green, Robert (USATXW) <RGreen@usa.doj.gov>; Natalie Lamy <nlamy@thelawcenterpc.com>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

Reggie,

Thanks on all.

Possible to get the denial letter?

Best,

**\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:**

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---

**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Sent:** Tuesday, April 4, 2023 10:47 AM

**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>; Natalie Lamy <[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

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Jason,

1. Thanks for sending the revised 26(f) with plaintiff's modifications. There is a lot of redlining in the document. It might help if we could all look at a clean copy to make sure things are properly formatted and easy for the Court to follow. I'm happy to circulate a clean copy later this afternoon.
2. The defendants do not object to your request for an additional 30-day extension to file plaintiff's opposition brief. Plaintiff's opposition is currently due by April 18, so the extension would extend the deadline for plaintiff's filing to May 18.
3. The relevant federal agencies have reviewed your letter dated February 13, 2023, requesting "that counsel and Plaintiff be authorized access to and the ability to discuss and submit classified facts in this proceeding." The request for such access has been denied.

Thank you,

Reggie

---

Reginald M. Skinner

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---

**From:** Jason R. Wareham <[jwareham@thelawcenterpc.com](mailto:jwareham@thelawcenterpc.com)>

**Sent:** Monday, April 03, 2023 5:35 PM

**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[RGreen@usa.doj.gov](mailto:RGreen@usa.doj.gov)>; Natalie Lamy <[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

Hey Reggie,

Made some tweaks to the 26f. Red (or Green as the case may be) line Attached.

Do you have a proposed timeline on the Classification Authority request?

Given the timetable around that request, Plaintiff requests an additional 30 day extension from the current MTD deadline to receive an answer to that request (and assumedly litigate) any potential issues. Will you consent? Of course, due considerations will be granted in return.

Best,

Jason

**\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:**

[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)

[Book Teams Meeting with Jason Wareham](#)



**Jason  
Wareham**

Managing Attorney  
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---

**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Sent:** Tuesday, March 28, 2023 11:59 PM

**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>; Natalie Lamy <[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

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Jason and John,

Please see the attached redline with defendants' edits to the 26(f) report.

Thanks,  
Reggie

---

Reginald M. Skinner  
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**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Sent:** Monday, March 20, 2023 2:52 PM

**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[RGreen@usa.doj.gov](mailto:RGreen@usa.doj.gov)>; Natalie Lamy <[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)>

**Subject:** Re: [EXTERNAL]RE: Extension and Rule 26F

Natalie will you please provide the copy he requests below?

**\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action: [nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)**

## Jason Wareham

Managing Attorney



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---

**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>  
**Sent:** Monday, March 20, 2023 12:49:55 PM  
**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>  
**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>  
**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

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Thanks Jason. We have been in touch with the relevant agencies and hope to provide a formal response to your request for access to classified information in the coming days.

I clicked the link in your email below, and the working draft of the 26(f) report you've originated appears to already include track changes. I think it would be useful if you could please send over a clean copy that does not already include redlining—so that we can better keep track of who's proposing what edits. Also, please let me know if you don't mind sending the document as a stand-alone MS Word attachment, as opposed to linking to the SharePoint cloud?

Thanks,  
Reggie

---

Reginald M. Skinner  
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---

**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Sent:** Monday, March 20, 2023 2:33 PM

**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[RGreen@usa.doj.gov](mailto:RGreen@usa.doj.gov)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

Greetings, Reggie:

I waited a bit as I was hoping to have some resolution on our request to the Classification Authorities, but



with the time it is taking, I thought it best we get this on file. Please see a draft 26(f) report here: [2023 02-11 DRAFT 26.F Report.docx](#) Feel free to make proposed edits. I would ask that we keep the redline going for easy tracking.

Best,

Jason

\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:  
[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)



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---

**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Sent:** Wednesday, February 15, 2023 12:04 PM

**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

Ok, understood. I am not allowed know what is in my client's head as "discovery."

Procedurally, have you submitted the letter sent this week to the Classification Authorities or are you refusing to forward given your position?

If refusing to forward, please consider this a conference on a motion to compel access to classified information in my client's own knowledge base as well as the relief contained in the letter.

Best,

Jason

**\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:**

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---

**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>  
**Sent:** Wednesday, February 15, 2023 11:54 AM  
**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>  
**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>  
**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

I'm not sure how to state it any differently than below.

We do not agree that Dr. Roe is entitled to discovery for purposes of gathering facts to amend the complaint. Nor do we agree that there needs to be a "solution" for amending the complaint with classified information that Dr. Roe claims to possess.

So yes, the fact that Dr. Roe claims to currently possess classified information does not change the fundamental point that the pending dismissal motion raises several jurisdictional and substantive legal barriers that have nothing to do with the factual specificity of the complaint.

And again, unless and until the Court rejects those threshold defenses, it is premature to try to resolve the side issues you've raised about discovery or a "solution" for accessing/presenting classified information.

---

Reginald M. Skinner  
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---

**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Sent:** Wednesday, February 15, 2023 1:43 PM

**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[RGreen@usa.doj.gov](mailto:RGreen@usa.doj.gov)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

Ok, are you stating that discovery = speaking to my client about information he already knows?

**\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:**

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**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>  
**Sent:** Wednesday, February 15, 2023 11:29 AM  
**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>  
**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>  
**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

Thanks for your email, Jason, and sorry I missed your call this morning.

We do not agree that Dr. Roe is entitled to discovery for purposes of gathering facts to amend the complaint. Nor do we agree that there needs to be a “solution” for amending the complaint with classified information that Dr. Roe claims to possess.

As detailed in the Defendants’ Response, the pending motion to dismiss raises several jurisdictional and substantive legal barriers that have nothing to do with the factual specificity of the complaint. For example, whether Dr. Roe has any Bivens remedy at all for the alleged retaliation or deprivation of his due process rights is a threshold question that does not turn on the content of any classified information. As for Dr. Roe’s request for equitable relief (including reinstatement), the Court lacks jurisdiction to review Executive Branch security determinations or otherwise restore Dr. Roe’s access to classified programs. Likewise, the jurisdictional bar that Section 2680 presents to Dr. Roe’s FTCA claims raises an abstract legal question that has nothing to do with any classified facts Dr. Roe might possess. Ultimately, the motion to dismiss raises several pure questions of law—indeed, fundamental questions of subject matter jurisdiction and immunity. Unless and until the Court rejects those threshold defenses, it is premature to try to resolve the side issues you’ve raised about discovery or a “solution” for accessing/presenting classified information.

You should also be aware that in the event adjudication of your Dr. Roe's claims genuinely would require consideration of classified information, the government would have to consider invoking the state secrets privilege. But for the reasons I just mentioned, that too would be premature at this point.

Thanks,  
Reggie

---

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**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>  
**Sent:** Wednesday, February 15, 2023 9:37 AM  
**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>  
**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[RGreen@usa.doj.gov](mailto:RGreen@usa.doj.gov)>  
**Subject:** Re: [EXTERNAL]RE: Extension and Rule 26F

Reggie,

Tried to call. I'm not sure if we are talking past each other but I want to clarify. Assuming arguendo no discovery continues, this does not resolve the need for a classified information solution. Let me break it down.

1. I believe we all would agree that a remedy in a Rule 12b motion is amending a complaint.

2. You have made a number of arguments that we have failed to state a claim based on specificity or failure to allege sufficient facts on which relief could be granted.
3. We have notified the government that additional facts are available but classified; therefore unavailable to even discuss with our client outside a SCIF let alone write on an unclassified computer and submit (even under seal) to the court.
4. A solution to this is absolutely necessary or we are blocked from a rule 12 remedy.
5. This has zero to do with discovery even if you're correct that immunity arguments block discovery (not conceding).

The overarching issue that seems to be missed here is that classified information, even if contained within someone's head, cannot be verbalized or written down unless the others who hear it are approved and read in as well and are sitting in a SCIF. The ability to submit under seal to the court is secondary. Before that can even happen, Roe must be authorized to tell me and I must be authorized to hear it or it violates the national security acts.

Does the government still maintain the position that we don't need a solution for how we amend the complaint with classified information? Just amend. Not talking discovery.

Please let me know your position on just that narrow issue before I reply to your response.

Best,

Jason

**\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt  
action: [nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)**

**Jason Wareham**  
Managing Attorney

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**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Sent:** Wednesday, February 15, 2023 7:05:36 AM

**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

-  
Good morning,

-  
The Defendants' response is attached. We will forward the file-stamped copy when it becomes available.

-  
Thank you.



Reggie

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Reginald M. Skinner

Senior Trial Attorney

U.S. Department of Justice, Civil Division, Torts Branch

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**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Sent:** Tuesday, February 14, 2023 1:29 PM

**To:** Skinner, Reginald M. (CIV) [Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)

**Cc:** John Hodges [john@hhtx.law](mailto:john@hhtx.law); Green, Robert (USATXW) [RGreen@usa.doj.gov](mailto:RGreen@usa.doj.gov)

**Subject:** RE: [EXTERNAL]RE: Extension and Rule 26F

-

Reggie,

-

This was just filed. I will have a stamped copy for you in due course.

-

Best,

-

-

\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:

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**From:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Sent:** Monday, February 6, 2023 2:22 PM

**To:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>; Green, Robert (USATXW) <[Robert.Green3@usdoj.gov](mailto:Robert.Green3@usdoj.gov)>

**Subject:** [EXTERNAL]RE: Extension and Rule 26F

**EXTERNAL EMAIL. Use caution accessing links or attachments.**

Hi Jason,

-

I was just about to email you. As previously mentioned, I do not object to an extension on your opposition to the defendants' motion to dismiss. You were very accommodating to my earlier extension requests, and I am very happy to extend the same courtesy to you.

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My co-counsel, AUSA Robert Green, and I are available to meet and confer tomorrow. How's 2:00 p.m. EST? I can circulate a conference line, if this time works.

-

We should also close the loop on the motion to unseal. The defendants will be prepared to move to unseal the case before the end of this week.

-

Thanks,  
Reggie

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Reginald M. Skinner

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Constitutional & Specialized Tort Litigation

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*For courier or overnight mail:*

175 N Street, NE, 7th Fl., Washington DC 20002

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**From:** Jason R. Wareham <[jrwareham@thelawcenterpc.com](mailto:jrwareham@thelawcenterpc.com)>

**Sent:** Monday, February 06, 2023 4:04 PM

**To:** Skinner, Reginald M. (CIV) <[Reginald.M.Skinner@usdoj.gov](mailto:Reginald.M.Skinner@usdoj.gov)>

**Cc:** John Hodges <[john@hhtx.law](mailto:john@hhtx.law)>

**Subject:** [EXTERNAL] Extension and Rule 26F

-

Reggie,

-  
While we already discussed a first extension, I'd like to discuss a bit more detail with you as well as execute the 26f conference.

-  
Would you have time tomorrow for this call?

-  
Best,

-  
\*\*Please keep my law clerk, Natalie Lamy, c/c'd on all emails to ensure prompt action:

[nlamy@thelawcenterpc.com](mailto:nlamy@thelawcenterpc.com)

[Click Here to Book Meeting with Jason Wareham](#)



**t:** (303) 991-5255  
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[thelawcenterpc.com](http://thelawcenterpc.com)

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